

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

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AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3506, Jan. 17, 1980, unless otherwise noted.

§ 2423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices filed with the Authority on or after January 11, 1979.

§ 2423.2 Informal proceedings.

(a) The purposes and policies of the Federal Service Labor-Management

Relations Statute can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Authority and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges with the Authority.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the six (6) month period of limitation set forth in 5 U.S.C. 7118(a)(4), it shall be the policy of the Authority and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by the Regional Director.

(c) In order to afford the parties an opportunity to implement the policy referred to in paragraphs (a) and (b) of this section, the investigation of an unfair labor practice charge by the Regional Director will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, during which period the parties are urged to attempt to informally resolve the unfair labor practice allegation.

(5 U.S.C. 7118(a)(5) and 7134)

[45 FR 3506, Jan. 17, 1980, as amended at 48 FR 27532, June 16, 1983]

§ 2423.3 Who may file charges.

An activity, agency or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 5 U.S.C. 7116.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 5 U.S.C. 7116 shall be submitted on forms prescribed by the Authority and shall contain the following:

- (1) The name, address and telephone number of the person(s) making the charge;
- (2) The name, address and telephone number of the activity, agency, or

labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and subsection(s) of chapter 71 of title 5 of the United States Code alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge (i) has been raised previously in a grievance procedure; (ii) has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board or the Special Counsel of the Merit Systems Protection Board for consideration or action; or (iii) involves a negotiability issue raised by the charging party in a petition pending before the Authority pursuant to part 2424 of this subchapter.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the Regional Director any supporting evidence and documents.

§ 2423.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to part 2424 of this subchapter a petition for review of the same negotiability issue, the Authority and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended.

Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Authority, the appropriate Regional Director and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under part 2424 of this subchapter.

§ 2423.6 Filing and service of copies.

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director for any such region.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the Regional Director. The Regional Director will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

(c) A charge will be deemed to be filed when it is received by the appropriate Regional Director in accordance with the requirements in paragraph (a) of this section.

[45 FR 3506, Jan. 17, 1986, as amended at 51 FR 45751, Dec. 22, 1986]

§ 2423.7 Investigation of charges.

(a) The Regional Director, on behalf of the General Counsel, shall conduct such investigation of the charge as the Regional Director deems necessary.

Consistent with the policy set forth in §2423.2, the investigation will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, to informally resolve the unfair labor practice allegation.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the Regional Director.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the Regional Director.

(d) The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information from all potential sources during the course of the investigation. To this end, it shall be the policy of the Authority and the General Counsel to protect the identity of individuals and the substance of the statements and information they submit or which is obtained during the investigation as a means of assuring the Authority's and the General Counsel's continuing ability to obtain all relevant information.

(5 U.S.C. 7118(a)(5) and 7134)

[45 FR 3506, Jan. 17, 1980, as amended at 48 FR 27532, June 16, 1983]

§2423.8 Amendment of charges.

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in §2423.6.

§2423.9 Action by the Regional Director.

(a) The Regional Director shall take action which may consist of the following, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to issue a complaint;

(3) Approve a written settlement agreement in accordance with the provisions of §2423.11;

(4) Issue a complaint;

(5) Upon agreement of all parties, transfer to the Authority for decision, after issuance of a complaint, a stipu-

lation of facts in accordance with the provisions of §2429.1(a) of this subchapter; or

(6) Withdraw a complaint.

(b) Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel will initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority for such temporary relief is final and may not be appealed to the Authority.

(c) Upon a determination to issue a complaint, whenever it is deemed advisable by the Authority to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the Regional Attorney or other designated agent of the Authority to whom the matter has been referred will make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Such temporary relief will not be sought unless the record establishes probable cause that an unfair labor practice is being committed, or if such temporary relief will interfere with the ability of the agency to carry out its essential functions.

(d) Whenever temporary relief has been obtained pursuant to 5 U.S.C. 7123(d) and thereafter the Administrative Law Judge hearing the complaint, upon which the determination to seek such temporary relief was predicated, recommends dismissal of such complaint, in whole or in part, the Regional Attorney or other designated agent of the Authority handling the case for the Authority shall inform the district court which granted the temporary relief of the possible change in circumstances arising out of the decision of the Administrative Law Judge.

§2423.10 Determination not to issue complaint; review of action by the Regional Director.

(a) If the Regional Director determines that the charge has not been

timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to issue a complaint.

(b) If the Regional Director determines not to issue a complaint on a charge which is not withdrawn, the Regional Director shall provide the parties with a written statement of the reasons for not issuing a complaint.

(c) The charging party may obtain a review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within twenty-five (25) days after service of the Regional Director's decision. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based. A copy of the appeal shall also be filed with the Regional Director. In addition, the charging party should notify all other parties of the fact that an appeal has been taken, but any failure to give such notice shall not affect the validity of the appeal.

(d) A request for extension of time to file an appeal shall be in writing and received by the General Counsel not later than five (5) days before the date the appeal is due. The charging party should notify the Regional Director and all other parties that it has requested an extension of time in which to file an appeal, but any failure to give such notice shall not affect the validity of its request for an extension of time to file an appeal.

(e) The General Counsel may sustain the Regional Director's refusal to issue or re-issue a complaint, stating the grounds of affirmance, or may direct the Regional Director to take further action. The General Counsel's decision shall be served on all the parties. The decision of the General Counsel shall be final.

§ 2423.11 Settlement or adjustment of issues.

General settlement policy

(a) At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest

permit, all interested parties shall have the opportunity to submit to the Regional Director with whom the charge was filed, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

Precomplaint informal settlements

(b)(1) Prior to the issuance of any complaint or the taking of other formal action, the Regional Director will afford the charging party and the respondent a reasonable period of time in which to enter into an informal settlement agreement to be approved by the Regional Director. Upon approval by the Regional Director and compliance with the terms of the informal settlement agreement, no further action shall be taken in the case. If the respondent fails to perform its obligations under the informal settlement agreement, the Regional Director may determine to institute further proceedings.

(2) In the event that the charging party fails or refuses to become a party to an informal settlement agreement offered by the respondent, if the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director and the latter shall decline to issue a complaint. The charging party may obtain a review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.10(c). The General Counsel shall take action on such appeal as set forth in § 2423.10(e).

Post complaint settlement policy

(c) Consistent with the policy reflected in paragraph (a) of this section, even after the issuance of a complaint, the Authority favors the settlement of issues. Such settlements may be either informal or formal. Informal settlement agreements shall be accomplished as provided in paragraph (b) of this section. Formal settlement agreements are subject to the approval of the Authority. In such formal settlement agreements, the parties shall agree to waive their right to a hearing

and agree further that the Authority may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily the formal settlement agreement also contains the respondent's consent to the Authority's application for the entry of a decree by the appropriate federal court enforcing the Authority's order.

Post complaint—prehearing formal settlements

(d)(1) If, after issuance of a complaint but before opening of the hearing, the charging party and the respondent enter into a formal settlement agreement, and such agreement is accepted by the Regional Director, the formal settlement agreement shall be submitted to the Authority for approval.

(2) If, after issuance of a complaint but before opening of the hearing, the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. The charging party will be so informed and provided a brief written statement by the Regional Director of the reasons therefor. The formal settlement agreement together with the charging party's objections, if any, and the Regional Director's written statements, shall be submitted to the Authority for approval. The Authority may approve or disapprove any formal settlement agreement or return the case to the Regional Director for other appropriate action.

Post complaint—prehearing informal settlements

(3) After the issuance of a complaint but before opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may withdraw the complaint and approve an informal settlement agreement pursuant to paragraph (b) of this section.

Informal settlements after the opening of the hearing

(e)(1) After issuance of a complaint and after opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may request the Administrative Law Judge for permission to withdraw the complaint and, having been granted such permission to withdraw the complaint, may approve an informal settlement pursuant to paragraph (b) of this section.

Formal settlements after the opening of the hearing

(2) If, after issuance of a complaint and after opening of the hearing, the parties enter into a formal settlement agreement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval.

(3) If the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. After the charging party is given an opportunity to state on the record or in writing the reasons for opposing the formal settlement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval. The Authority may approve or disapprove any formal settlement agreement or return the case to the Administrative Law Judge for other appropriate action.

§ 2423.12 Issuance and contents of the complaint.

(a) After a charge is filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, the Regional Director shall issue and cause to be

served on all other parties a formal complaint: *Provided, however,* That a determination by a Regional Director to issue a complaint shall not be subject to review.

(b) The complaint shall include:

(1) Notice of the charge;

(2) Notice that a hearing will be held before an Administrative Law Judge;

(3) Notice of the time and place fixed for the hearing which shall not be earlier than five (5) days after service of the complaint;

(4) A statement of the nature of the hearing;

(5) A clear and concise statement of the facts upon which assertion of jurisdiction by the Authority is predicated;

(6) A reference to the particular sections of chapter 71 of title 5 of the United States Code and the rules and regulations involved; and

(7) A clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

(c) The Chief Administrative Law Judge may, upon such judge's own motion or upon proper cause shown by any other party, extend the date of the hearing or may change the place at which it is to be held.

(d) A complaint may be amended, upon such terms as may be deemed just, prior to the hearing, by the Regional Director issuing the complaint; at the hearing and until the case has been transmitted to the Authority pursuant to § 2423.26, upon motion by the Administrative Law Judge designated to conduct the hearing; and after the case has been transmitted to the Authority pursuant to § 2423.26, upon motion by the Authority at any time prior to the issuance of an order based thereon by the Authority.

(e) Any such complaint may be withdrawn before the hearing by the Regional Director.

§ 2423.13 Answer to the complaint; extension of time for filing; amendment.

(a) Except in extraordinary circumstances as determined by the Regional Director, within twenty (20)

days after the complaint is served upon the respondent, the respondent shall file the original and four (4) copies of the answer thereto, signed by the respondent or its representative, with the Regional Director who issued the complaint. The respondent shall serve a copy of the answer on the Chief Administrative Law Judge and on all other parties.

(b) *The answer:* (1) Shall specifically admit, deny, or explain each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) Shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Authority, unless good cause to the contrary is shown.

(c) Upon the Regional Director's own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

(d) The answer may be amended by the respondent at any time prior to the hearing. During the hearing or subsequent thereto, the answer may be amended in any case where the complaint has been amended, within such period as may be fixed by the Administrative Law Judge or the Authority. Whether or not the complaint has been amended, the answer may, in the discretion of the Administrative Law Judge or the Authority, upon motion, be amended upon such terms and within such periods as may be fixed by the Administrative Law Judge or the Authority.

§ 2423.14 Prehearing disclosure, conduct of hearing.

(a) Parties will exchange proposed witness lists and copies of documents, with index, intended to be offered into evidence at the hearing at a prehearing conference at the site of the unfair labor practice hearing. The calling of witnesses or introduction of exhibits not exchanged prior to the hearing will be subject to the discretion of the Administrative Law Judge presiding.

(b) Hearings shall be conducted not earlier than five (5) days after the date on which the complaint is served. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge. A substitute Administrative Law Judge may be designated at any time to take the place of the Administrative Law Judge previously designated to conduct the hearing. Such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5 of the United States Code, except that the parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by a court.

(c) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

[45 FR 3506, Jan. 17, 1986, as amended at 51 FR 45753, Dec. 22, 1986]

§ 2423.15 Intervention.

Any person involved and desiring to intervene in any proceeding pursuant to this part shall file a motion in accordance with the procedures set forth in § 2423.22. The motion shall state the grounds upon which such person claims involvement.

§ 2423.16 Rights of parties.

A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 2423.17 Rules of evidence.

The parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by court. Any

evidence may be received, except that an Administrative Law Judge may exclude any evidence which is immaterial, irrelevant, unduly repetitious or customarily privileged.

§ 2423.18 Burden of proof before the Administrative Law Judge.

The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

§ 2423.19 Duties and powers of the Administrative Law Judge.

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before such judge. Subject to the rules and regulations of the Authority and the General Counsel, an Administrative Law Judge presiding at a hearing may:

(a) Grant requests for subpoenas pursuant to § 2429.7 of this subchapter;

(b) Rule upon petitions to revoke subpoenas pursuant to § 2429.7 of this subchapter;

(c) Administer oaths and affirmations;

(d) Take or order the taking of a deposition whenever the ends of justice would be served thereby;

(e) Order responses to written interrogatories whenever the ends of justice would be served thereby unless it would interfere with the Authority's and the General Counsel's policy of protecting the personal privacy and confidentiality of sources of information as set forth in § 2423.7(d);

(f) Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(g) Rule upon offers of proof and receive relevant evidence and stipulations of fact with respect to any issue;

(h) Limit lines of questioning or testimony which are immaterial, irrelevant, unduly repetitious, or customarily privileged;

(i) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in contemptuous conduct and strike all related testimony of witnesses refusing to

answer any questions ruled to be proper;

(j) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the judge's own motion;

(k) Dispose of procedural requests, motions, or similar matters, including motions referred to the Administrative Law Judge by the Regional Director and motions for summary judgment or to amend pleadings; dismiss complaints or portions thereof; order hearings reopened; and, upon motion, order proceedings consolidated or severed prior to issuance of the Administrative Law Judge's decision;

(l) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(m) Continue the hearing from day-to-day or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(n) Prepare, serve and transmit the decision pursuant to §2423.26;

(o) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: *Provided, however*, That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(p) Approve requests for withdrawal of complaints based on informal settlements occurring after the opening of the hearing pursuant to §2423.11(e)(1), and transmit formal settlement agreements to the Authority for approval pursuant to §2423.11(e)(2) and (3);

(q) Grant or deny requests made at the hearing to intervene and to present testimony;

(r) Correct or approve proposed corrections of the official transcript when deemed necessary;

(s) Sequester witnesses where appropriate; and

(t) Take any other action deemed necessary under the foregoing and not prohibited by the regulations in this subchapter.

§2423.20 Unavailability of Administrative Law Judges.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a decision on the record as made, or both.

§2423.21 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Formal exceptions to adverse rulings are unnecessary. Automatic exceptions will be allowed to all adverse rulings. Except by special permission of the Authority, and in view of §2429.11 of this subchapter, rulings by the Administrative Law Judge shall not be appealed prior to the transmittal of the case to the Authority, but shall be considered by the Authority only upon the filing of exceptions to the Administrative Law Judge's decision in accordance with §2423.27. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

§2423.22 Motions.

(a) *Filing of Motions.* (1) Motions made prior to a hearing and any response thereto shall be made in writing and filed with the Regional Director: *Provided, however*, That after the issuance of a complaint by the Regional Director any motion to change the date of the hearing shall be filed with the Chief Administrative Law Judge immediately upon discovery of the circumstance which in the judgment of the moving party warrants a change in the date of the hearing. The moving party shall attempt to contact the other parties and shall inform the Chief Administrative Law Judge of the

positions of the other parties on the motion. Only in extraordinary circumstances will such a motion be granted where filed less than ten (10) days prior to the scheduled hearing. Motions made after the hearing opens and prior to the transmittal of the case to the Authority shall be made in writing to the Administrative Law Judge or orally on the record. After the transmittal of the case to the Authority, motions and any response thereto shall be filed in writing with the Authority: *Provided, however,* That a motion to correct the transcript shall be filed with the Administrative Law Judge.

(2) A response to a motion shall be filed within five (5) days after service of the motion, unless otherwise directed.

(3) An original and two (2) copies of the motions and responses shall be filed, and copies shall be served on the parties. A statement of such service shall accompany the original.

(b) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them before the hearing, or they may refer them to the Chief Administrative Law Judge.

(2) Except by special permission of the Authority, and in view of §2429.11 of this subchapter, rulings by the Regional Director shall not be appealed prior to the transmittal of the case to the Authority, but shall be considered by the Authority when the case is transmitted to it for decision.

(3) Administrative Law Judges may rule on motions referred to them prior to the hearing and on motions filed after the beginning of the hearing and before the transmittal of the case to the Authority. Such motions may be ruled upon by the Chief Administrative Law Judge in the absence of an Administrative Law Judge.

(4) Except by special permission of the Authority, and in view of §2429.11 of this subchapter, rulings by Administrative Law Judges shall not be appealed prior to the transmittal of the case to the Authority, but shall be considered by the Authority when the case is transmitted to it for decision. In the discretion of the Administrative Law Judge, the hearing may be continued

or adjourned pending any such request for special permission to appeal.

[45 FR 3506, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§2423.23 Waiver of objections.

Any objection not made before an Administrative Law Judge shall be deemed waived.

§2423.24 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§2423.25 Filing of briefs.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original and four (4) copies within a reasonable time fixed by the Administrative Law Judge, but not in excess of thirty (30) days from the close of the hearing. Copies of any brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Administrative Law Judge. Requests for extensions of time pursuant to §2429.23(a) to file briefs shall be made to the Chief Administrative Law Judge, in writing, and copies thereof shall be served on the other parties. A statement of such service shall be furnished. Requests for extensions of time must be received not later than five (5) days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

[46 FR 40674, Aug. 11, 1981]

§2423.26 Transmittal of the Administrative Law Judge's decision to the Authority; exceptions.

(a) After the close of the hearing, and the receipt of briefs, if any, the Administrative Law Judge shall prepare the decision expeditiously. The Administrative Law Judge shall prepare a decision even when the parties enter into a stipulation of fact at the hearing. The decision shall contain findings of fact, conclusions of law, and the reasons or basis therefore, including any necessary credibility determinations, and conclusions as to the disposition of the

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case including, where appropriate, the remedial action to be taken and notices to be posted.

(b) The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Authority including the judge's decision and the record. The record shall include the charge, complaint, service sheet, answer, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) An original and four (4) copies of any exception to the Administrative Law Judge's decision and briefs in support of exceptions may be filed by any party with the Authority within twenty-five (25) days after service of the decision: *Provided, however,* That the Authority may for good cause shown extend the time for filing such exceptions. Requests for extensions of time pursuant to §2429.23(a) to file exceptions must be received by the Authority not later than five (5) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Authority.

[45 FR 3506, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§2423.27 Contents of exceptions to the Administrative Law Judge's decision.

(a) Exceptions to an Administrative Law Judge's decision shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Administrative Law Judge's decision to which objection is made; and

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to ruling, finding or conclusion which is not specifically urged shall be deemed to have been waived. Any exception which fails to

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comply with the foregoing requirements may be disregarded.

§2423.28 Briefs in support of exceptions; oppositions to exceptions; cross-exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued; and

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Any party may file an opposition to exceptions, and/or cross-exceptions, and a supporting brief with the Authority within ten (10) days after service of any exceptions to an Administrative Law Judge's decision. Copies of any opposition and/or cross-exceptions and of any supporting briefs shall be served on all other parties, and a statement of such service shall be submitted with the documents filed with the Authority.

[45 FR 3506, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§2423.29 Action by the Authority.

(a) After considering the Administrative Law Judge's decision, the record, and any exceptions and related submissions filed, the Authority shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That in the absence of exceptions filed timely and in accordance with §2423.27, the findings, conclusions, and recommendations in the decision of the Administrative Law Judge shall, without precedential significance, become the findings, conclusions, decision and order of the Authority, and all objections and exceptions thereto shall be deemed waived for all purposes.

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(b) Upon finding a violation, the Authority shall issue an order:

(1) To cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(2) Requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(3) Requiring reinstatement of an employee with backpay in accordance with 5 U.S.C. 5596; or

(4) Including any combination of the actions described in paragraphs (1) through (3) of this paragraph (b), or such other action as will carry out the purpose of the Federal Service Labor-Management Relations Statute.

(c) Upon finding no violation, the Authority shall dismiss the complaint.

[45 FR 3506, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§ 2423.30 Compliance with decisions and orders of the Authority.

When remedial action is ordered, the respondent shall report to the appropriate Regional Director within a specified period that the required remedial action has been effected. When the General Counsel finds that the required remedial action has not been effected, the General Counsel shall take such action as may be appropriate, including referral to the Authority for enforcement.

§ 2423.31 Backpay proceedings.

After the entry of an Authority order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the Regional Director that a controversy exists between the Authority and a respondent which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a backpay specification accompanied by a notice of hearing or a notice of hearing without a specification. The respondent shall, within twenty (20) days after the service of a backpay specification accompanied by a notice of hearing, file an answer thereto in accordance with § 2423.13 with the Regional Director issuing such specifica-

tion. No answer need be filed by the respondent to a notice of hearing issued without a specification. After the issuance of a notice of hearing, with or without a backpay specification, the procedures provided in §§ 2423.14 to 2423.29, inclusive, shall be followed insofar as applicable.

PART 2424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

Subpart A—Instituting an Appeal

Sec.

2424.1 Conditions governing review.

2424.2 Who may file a petition.

2424.3 Time limits for filing.

2424.4 Content of petition; service.

2424.5 Selection of the unfair labor practice procedure or the negotiability procedure.

2424.6 Position of the agency; time limits for filing; service.

2424.7 Response of the exclusive representative; time limits for filing; service.

2424.8 Additional submissions to the Authority.

2424.9 Hearing.

2424.10 Authority decision and order; compliance.

Subpart B—Criteria for Determining Compelling Need for Agency Rules and Regulations

2424.11 Illustrative criteria.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3511, Jan. 17, 1980, unless otherwise noted.

Subpart A—Instituting an Appeal

§ 2424.1 Conditions governing review.

The Authority will consider a negotiability issue under the conditions prescribed by 5 U.S.C. 7117 (b) and (c), namely: If an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with law, rule or regulation, the exclusive representative may appeal the allegation to the Authority when—

(a) It disagrees with the agency's allegation that the matter as proposed to be bargained is inconsistent with any Federal law or any Government-wide rule or regulation; or